S.B. CIVIL WRIT PETITION NO.2569/2007
(State of Rajasthan & anr. Vs. Jeeva and others)

Date of Order :: 19th September 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.L.Tiwari, Dy. Government Advocate for the petitioners

BY THE COURT:

By way of this writ petition, the petitioners, State of Rajasthan through the Commissioner, Devasthan Department and the Assistant Commissioner, Devasthan Department seek to question the order dated 13.9.2000 (Annex.3) made by the Controlling Authority, Payment of Gratuity Act,1972, Udaipur in case No.1/1994 and order dated 10.05.2006 (Annex.4) made by the Appellate Authority in Appeal No.52/2000.

The respondent No.1 Jeeva submitted his claim before the aforesaid Controlling Authority under the Payment of Gratuity Act, 1972 ('the Act of 1972') with the submissions that he was appointed on the post of Sepoy in Kesariyaji Mandir, Rishabhdev managed by the non-applicants, the present petitioners, and he retired on 31.04.1990 from the post of Jamadar after serving for 50 years and 6 months; that his last salary was Rs.572/- per month; that the non-applicants were earning from rent and offerings and more than 10 employees

were working and, therefore, the respondents were required to make payment of the amount of gratuity. The claimant sought condonation of delay by moving an application under Section 5 of the Limitation Act.

While opposing the claims so made, the non-applicants submitted, inter alia, that the claimant was appointed under the Fund Rules for managing the affairs of the temple; and such Rules do not provide for any payment towards gratuity.

The Controlling Authority has proceeded to condone the delay in filing the claim; and has considered the merits of the case in sufficient detail. The learned Authority has referred to the submission of the non-applicants that under Rule 3 of the Devasthan Nidhi Sewa Niyam, 1959 the staff was to be paid salary and allowances according to the work and terms and conditions; and according to the financial condition of the temple. The learned Authority has observed that the claimant was not claiming any better facilities or salary but the claim was merely for payment of gratuity after retirement in accordance with salary paid to him; and such was his legal right. The learned Authority has also considered the submission of the non-applicants that the claimant was in temporary employment and his provident fund amount was not deposited; and has observed that the employee like the claimant who had worked for 50 years and six months, had been accorded promotions, and had thereafter retired, was required to be treated as a permanent employee. The learned Authority has also found that by the order dated

20.04.1983 the Devasthan Commissioner directed that the employees working in the said temple be declared permanent and be allowed salary, provident fund and other benefits in accordance with law; and has found the claimant entitled for gratuity with the following observations:-

> "विपक्षी द्वारा प्रस्तुत किये गये सेवा नियमों का भी मेरे द्वारा अवलोकन किया गया, उसमें केवलमात्र इतना वर्णन किया गया है कि नियोजित कर्मचारियों को वेतन भत्ते एवं प्रसाद मंदिर की आय अनुरूप देय होंगे, उन्हें ग्रेच्यूटी या प्रोवीडेन्ट फण्ड की सुविधा देय होगी या नहीं इस सम्बन्ध में उन नियमों में कोई हवाला नहीं दिया गया है, इससे यह स्पष्ट है कि वे इस बाबत प्रभावी अधिनियमों से रेग्यूलेट होते है। प्रार्थी पक्ष ने अपनी बहस में यह कहा कि चूंकि विपक्षी संस्थान विभिन्न स्त्रोतों से आय का अर्जन करता है तथा 10 से अधिक श्रमिक है, अत: वे प्रार्थी को उपादान भुगतान अधिनियम के तहत ग्रेच्यूटी चुकाने के उत्तरदायी हैं। इस बाबत देवस्थान आयुक्त के आदेश पत्र क्रमांक एफ. 12/9/ संस्था/देव 83/ 5218 दिनांक 20.4.83 पेश करते हुए यह कहा कि इस सम्बन्ध में यह स्पष्ट आदेश है कि उक्त मंदिर में कार्यरत कर्मचारियों को नियमों के अन्तर्गत स्थाई घोषित करते हुए उन्हें नियमानुसार वेतन, प्रोवीडेन्ट फण्ड, अवकाश आदि की सुविधा दी जाय, इसके साथ प्रार्थी अधिवक्ता ने माननीय सर्वोच्च न्यायालय द्वारा 1996 लेब. आई. सी. 1545 सुप्रीम कोर्ट सिविल अपील नं. 6892/96 जोतिन्द्रनाथ राय बनाम सुरेन्द्र बीकाराम सिंह अग्रवाल व अन्य, न्याय दृष्टांत प्रस्तुत कर यह अवगत कराया कि माननीय सर्वोच्च न्यायालय द्वारा भी यह माना गया है कि रिलिजियस एवं चेरिटेबल ट्रस्ट के कर्मचारी को ग्रेच्यूटी एक्ट की धारा 2 (ई) के तहत कर्मचारी मानते हुए ग्रेच्यूटी पाने का हकदार है। इसी तरह माननीय गुजरात हाई कोर्ट द्वारा 1998 ।।। एल.एल. जे (सप्लीमेन्ट्री) ए.ए.एम.डी. ट्रस्ट बनाम जे.ए. पटेल एस.जी. डब्ल्यू. यूनियन 1129 (गुजरात) का न्याय दृष्टांत पेश कर इसमें माननीय न्यायालय ने यह माना है कि राज्य सरकार द्वारा नियंत्रित मंदिर में पदधारित व्यक्ति ग्रेच्यूटी पाने का हकदार है। मेरे द्वारा दोनों पक्षों के तर्को का गहन मनन किया गया और मैं इस नतीजे पर पहूंचा हूं कि विपक्षी संस्थान में कार्यरत कर्मचारी उपादान भुगतान अधिनियम के तहत विपक्षी नियोजक से ग्रेच्यूटी की राशि पाने के अधिकारी हैं।"

The learned Appellate Authority has proceeded to reject the appeal filed by the non-applicants while observing that

Section 14 of the Act of 1972 has an overriding effect on other law and has found the claimant entitled to gratuity being of his legal right; and has found no infirmity in the order passed by the Controlling Authority.

The present petition has been filed with fundamental misdescription of the parties and even of the subject matter where repeatedly it has been stated as if the matter had been dealt with under the Payment of Wages Act and by the authorities thereunder; but leaving such shortcomings aside, this Court finds that the petition is absolutely bereft of substance even on merits.

There appears no infirmity in the observations made by the learned Controlling Authority as reproduced supra. It is also noticed that the Devasthan Commissioner by his order dated 20.04.1983 has specifically ordered allowing of provident fund and other benefits to the employees in the said temple. There appears no reason as to why the petitioner, an employee in the temple controlled by the petitioners, be held not entitled for the amount of gratuity. The learned Appellate Authority has rightly observed that the provisions of the Act of 1972 have overriding effect by virtue of Section 14.

It is also noticed that though the petitioners filed the appeal under Section 7(7) of the Act of 1972, but chose not to appear before the Appellate Authority.

Looking to the overall circumstances of the case, there appears no reason to interfere in the matter or to issue any writ, order or directions at the instance of the petitioners.

The petition fails and is, therefore, rejected.

(DINESH MAHESHWARI), J.

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